



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0625, FRL-9975-03-Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM₁₀, 2012 PM_{2.5}, 1997 Ozone, and the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of New Jersey's State Implementation Plan (SIP) revision submitted regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead, 2008 ozone, 2010 nitrogen dioxide, 2010 sulfur dioxide, 2011 carbon monoxide, 2006 particulate matter of 10 microns or less (PM₁₀), and 2012 particulate matter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The EPA is also proposing to approve three infrastructure requirements of the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2016-**

0625 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3892, or by email at Gardella.Anthony@epa.gov.

SUPPLEMENTARY INFORMATION:

The Supplementary Information section is arranged as follows:

Table of Contents:

- I. What action is the EPA proposing?
- II. What is the background for this proposed rulemaking?
- III. What elements are required under CAA sections 110(a)(1) and (2)?

IV. What did New Jersey submit?

V. How has the State addressed the elements of the section 110(a)(1) and (2) “infrastructure” provisions?

VI. What action is the EPA taking?

VII. Incorporation by Reference

VIII. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

The EPA is proposing to approve elements of the State of New Jersey’s Infrastructure State Implementation Plan (SIP) submission, dated October 17, 2014, and as supplemented on March 15, 2017, as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the following National Ambient Air Quality Standards (NAAQS or standard): 2008 ozone, 2008 lead, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), 2011 carbon monoxide (CO), 2006 particulate matter of 10 microns or less (PM₁₀), and 2012 particulate matter of 2.5 microns or less (PM_{2.5}). As explained below, the State has the necessary infrastructure, resources and general authority to implement the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, except where specifically noted.

The EPA is also proposing to approve three CAA section 110(a) infrastructure requirements for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS that were conditionally approved by the EPA on June 14, 2013 (78 FR 35764). New Jersey’s response to the conditional approval was not submitted to EPA within one year, but was submitted approximately three months late, and supplemented on

March 15, 2017, so the conditional approval is treated as a disapproval. The EPA is also now proposing to approve New Jersey's October 17, 2014 submittal, as supplemented on March 15, 2017, for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS.

II. What is the background for this proposed rulemaking?

On March 27, 2008 (73 FR 16436), the EPA promulgated a revised NAAQS for ozone. The EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm.

On October 15, 2008 (73 FR 66964), the EPA promulgated a new NAAQS, a rolling 3-month average NAAQS for lead. The 2008 lead NAAQS is 0.15 micrograms per cubic meter of air (µg/m³) maximum (not-to-be-exceeded).

On January 22, 2010 (75 FR 6474), the EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations.

On June 2, 2010 (75 FR 35520), the EPA promulgated a revised primary NAAQS for SO₂ at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

On December 14, 2012 (78 FR 3086), the EPA promulgated a revised primary NAAQS for PM_{2.5} for the annual standard. The revised standard was set at the level of 12 µg/m³ calculated as an annual average, which is averaged over a three-year period.

On September 21, 2006 (71 FR 61144), the EPA retained the primary and secondary 24-hour PM₁₀ standard of 150 µg/m³, not to be exceeded more than once per year on average over a 3-year period. The standard was initially promulgated on June 2, 1987 (52 FR 24634). The PM₁₀ standard was also retained on December 14, 2012 (78 FR 3086).

On August 31, 2011 (54 FR 54294), the EPA retained the existing primary and secondary standards for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour standard average, neither to be exceeded more than once per year. The standards were initially established on April 30, 1971 (36 FR 8186).

Section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs. Section 110(a)(2) of the CAA lists specific elements that states must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by the EPA. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. The EPA refers to this type of SIP submission as the “infrastructure” SIP because the SIP ensures that states can implement, maintain and enforce the air standards.

On October 17, 2014 the New Jersey Department of Environmental Protection (NJDEP) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 lead, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. On March 15, 2017, NJDEP submitted a supplement to the October 17, 2014 SIP submission.

Although not specifically required by 110(a)(1) since neither NAAQS was new or revised,¹ the SIP submission included infrastructure requirements for the 2006 PM₁₀ and 2011 CO NAAQS. New Jersey's SIP submission also addresses the infrastructure requirements that were conditionally approved for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS.

On March 30, 2016, New Jersey withdrew the portion of the October 17, 2014 SIP submittal addressing 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 Ozone NAAQS. The EPA subsequently issued a Finding of Failure to submit to New Jersey.²

On September 6, 2016³ EPA acted on elements of the October 17, 2014 SIP submittal that addressed interstate transport provisions concerning the Prevention of Significant Deterioration (PSD) regulations, and visibility protection. Section 110(a)(2)(D)(i)(II) (prongs 3 and 4).

III. What elements are required under CAA sections 110(a)(1) and (2)?

The infrastructure requirements of CAA section 110(a)(1) and (2) are discussed in the following EPA guidance documents: EPA's October 2, 2007, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards;" September 25, 2009, "Guidance on SIP Elements Required Under Section 110(a)(1)

¹ EPA notes that, when promulgated, the 2006 24 hour PM₁₀ NAAQS and the 2011 primary CO NAAQS were neither "new" nor "revised" NAAQS – they merely retained, without revision, prior NAAQS for those pollutants. Accordingly, promulgation of these NAAQS did not trigger a new obligation for New Jersey to make infrastructure SIP submissions.

² 81 FR 38963 (June 15, 2016).

³ 81 FR 64070 (September 19, 2016) (EPA disapproved prong 3, addressing interstate transport provisions concerning the PSD regulations, and approved prong 4, concerning visibility).

and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards;” September 13, 2013, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),”⁴(2013 Guidance) (addresses the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future); October 14, 2011, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS);” March 17, 2016, “Information on Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I).”

The EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of CAA 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): emission limits and other control measures;
- 110(a)(2)(B): ambient air quality monitoring/data system;
- 110(a)(2)(C): program for enforcement of control measures;
- 110(a)(2)(D)(i)(I) and (II): interstate pollution transport;
- 110(a)(2)(D)(ii): interstate and international pollution abatement;
- 110(a)(2)(E): adequate resources and authority, conflict of interest, oversight of local

⁴ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” can be found at: <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html>.

governments and local authorities;

- 110(a)(2)(F): stationary source monitoring and reporting;
- 110(a)(2)(G): emergency powers;
- 110(a)(2)(H): future SIP revisions;
- 110(a)(2)(I): plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): air quality modeling and data;
- 110(a)(2)(L): permitting fees;
- 110(a)(2)(M): consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172 of the CAA. See 77 FR 46354 (August 3, 2012); 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the nonattainment permit program requirements of 110(a)(2)(C) or the nonattainment planning requirements related to section 110(a)(2)(I).

One of the requirements of section 110(a)(2)(J) is that SIPs meet the applicable requirements of CAA part C related to visibility. New Jersey addresses visibility protection requirements through its Regional Haze SIP submittal which the EPA approved on January 3, 2012 (77 FR 19). As indicated in the EPA's September 2013 Infrastructure Guidance, although states are subject to visibility and regional haze program requirements under CAA part C, the visibility and regional haze requirements under CAA part C do not change due to promulgation of, or revision to, a NAAQS. The SIP is not required to be revised with respect to visibility protection since there are no new visibility obligations. Accordingly, air agencies do not need to address the visibility sub-element of section 110(a)(2)(J) in infrastructure SIP submissions. Hence, the EPA considers this sub-element to be not germane to infrastructure SIPs and therefore this action does not address the visibility sub-element of section 110(a)(2)(J).

IV. What did New Jersey submit?

The EPA is acting on a New Jersey SIP submittal dated October 17, 2014 which addresses the section 110 infrastructure requirements for the following seven NAAQS: 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5}. New Jersey's SIP revision also addresses the section 110(a)(2) infrastructure requirements for three elements that EPA conditionally approved on June 14, 2013 (78 FR 35764) for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. In a letter dated October 28, 2014, the EPA determined that New Jersey's infrastructure SIP revision, dated October 17, 2014, to be administratively complete except for inclusion of a state adopted PSD program.

New Jersey's October 2014 section 110 submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110(a)(1) and (2) for the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS and for the three section 110(a)(2) elements conditionally approved by the EPA in June 2013 for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. The State's plan references the current New Jersey Air Quality SIP, the New Jersey Statutes Annotated (NJSA) and/or the New Jersey Administrative Code (NJAC). The NJSA and the NJAC (air pollution control regulations) referenced in the submittal are publicly available. On June 4, 2014, NJDEP issued a notice providing the public the opportunity to comment and request a public hearing on the proposed 110 infrastructure SIP submittal. The public comment period ended on July 23, 2014 and the public did not request, nor did NJDEP hold, a public hearing. New Jersey air pollution control regulations that have been previously approved by the EPA and incorporated into the New Jersey SIP can be found at 40 CFR 52.1570 and are posted on the internet at <https://www.epa.gov/sips-nj/epa-approved-statutes-and-regulations-new-jersey-sip>.

V. How has the State addressed the elements of the section 110(a)(1) and (2) “infrastructure” provisions?

The EPA's evaluation and rationale for proposing action on New Jersey's October 2014 infrastructure SIP submittal is detailed in the “Technical Support Document for EPA's Proposed Rulemaking for the New Jersey State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act” dated February 2018 (TSD). The TSD also discusses in detail how New Jersey's SIP revision addresses the infrastructure requirements of section 110(a)(1) and

(2) of the CAA. The TSD is available in the docket (EPA-R02-OAR-2016-0625). The reader should refer to this TSD for the EPA's detailed rationale for proposing approval of particular CAA section 110(a)(2) elements. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

The following summarizes the EPA's proposed findings, based on the detailed rationale discussed in the TSD, for New Jersey's SIP revision addressing the infrastructure requirements of section 110(a)(1) and (2) for the following seven NAAQS: 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5}. NAAQS:

In this rulemaking, the EPA is proposing to approve New Jersey's infrastructure SIP submittal for the seven NAAQS noted herein as addressing the requirements of CAA section 110(a)(2) (A),(B),(C) (with the exception of program requirements for PSD and permitting programs for minor sources and minor modifications), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M) of the CAA.

In accordance with 40 CFR part 51, appendix V, EPA found that New Jersey's October 17, 2014 infrastructure SIP submittal is technically incomplete for the portions addressing the infrastructure elements in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the permitting program for PSD, because New Jersey has not adequately addressed the requirements of part C of title I of the CAA for having a SIP approved PSD permit program. The EPA found the remainder of the SIP submittal to be administratively and technically complete. On October 28, 2014, EPA sent a letter

to New Jersey Department of Environmental Protection notifying New Jersey of this determination. As a result of this incompleteness finding, the EPA is not taking action on the PSD related portions of section 110(a)(2)(C), (D)(ii), and (J) for the seven NAAQS included in New Jersey's October 2014 infrastructure SIP submittal, until New Jersey submits a SIP to address the PSD permit program requirements of part C of title I of the CAA.⁵ The EPA recognizes, however, that New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. New Jersey is already subject to a Federal Implementation Plan (FIP) which incorporates by reference the federal PSD provisions as codified in 40 CFR 51.21, with the exception of paragraph (a)(1), into the implementation plan for the State. 40 CFR 52.1603.⁶ New Jersey would not have to take further action for the FIP-based permitting process to continue operating.

The EPA does not anticipate any adverse consequences to New Jersey as a result of this incompleteness finding for the PSD related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for New Jersey's 2014 infrastructure SIP revision. First, mandatory sanctions would not apply to New Jersey under CAA section 179 because the failure to submit a PSD SIP is neither required under title I part D of the CAA, nor in response to a SIP call under section 110(k)(5) of the CAA. Second, EPA is not subject to any further FIP duty from our finding of incompleteness because of

⁵ As discussed in section II and footnote 3, above, EPA took action on section 110(a)(2)(D)(i)(II)(prongs 3 and 4). 81 FR 64070 (Sept. 19, 2016).

⁶ On August 7, 1980 (45 FR 52676, at 52741), EPA disapproved a number of states SIPs for PSD purposes, including New Jersey, and incorporated by reference portions of the federal PSD provisions in 40 CFR 52.21 into the implementation plans for those states. This FIP was subsequently amended to reflect amendments to the federal PSD rule, on March 10, 2003 (68 FR 11316, at 11322) and December 24, 2003 (68 FR 74483, at 74488). The PSD FIP is incorporated by reference in the New Jersey SIP in 40 CFR 52.1603.

the PSD FIP that has already been approved, and that addresses the SIP deficiency.

The EPA finds that the remainder of New Jersey's October 2014 infrastructure submittal provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the NAAQS. A detailed summary of EPA's review and rationale for approving New Jersey's infrastructure SIP submittal may be found in the TSD for this rulemaking action which is available on line at www.regulations.gov, Docket ID Number EPA-R02-OAR-2016-0625.

The EPA is not acting on the portions of the SIP submittal addressing CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS. As previously mentioned, in a letter to EPA dated March 30, 2016, New Jersey withdrew the portion of its October 17, 2014 SIP submission addressing 110(a)(2)(D)(i)(I) for interstate transport requirements (commonly referred to as the “Good Neighbor Provision” or “prongs 1 and 2”) with respect to the 2008 8-hour ozone NAAQS.⁷ The EPA will address the requirements of CAA sections 110(a)(2)(D)(i)(I) for the 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} in a separate action at a later date.

The following summarizes the EPA's proposed findings, based on the detailed rationale discussed

⁷ On June 15, 2016 (81 FR 38963) the EPA issued a finding that New Jersey failed to submit an infrastructure SIP revision for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), also called the “good neighbor” provision, for the 2008 8-hour ozone NAAQS. On November 16, 2015, the EPA proposed a rule to address the “good neighbor” provisions of the 2008 ozone NAAQS. The rule proposed to promulgate FIPs in 23 states, including New Jersey, to reduce interstate transport as to the 2008 ozone NAAQS. The EPA finalized the rule and respective FIPs on September 7, 2016. 81 FR 74504 (Oct. 26, 2016).

in the TSD, for New Jersey's SIP revision addressing the infrastructure requirements of section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS:

In this rulemaking, the EPA is also proposing to approve New Jersey's infrastructure SIP submittal for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS as addressing the requirements in CAA sections 110(a)(2)(E)(ii) [conflict of interest provisions] and (E)(iii) [oversight of local governments and local authorities]; and proposing to approve New Jersey's infrastructure SIP submittal for the 1997 8-hour ozone NAAQS as addressing the requirements in CAA section 110(a)(2)(G) [emergency powers]. The EPA previously conditionally approved sub-elements 110(a)(2)(E)(ii) and (E)(iii) and element 110(a)(2)(G) in a final rule dated June 14, 2013 (see 78 FR 35764). The EPA's approval was conditioned upon New Jersey correcting the following deficiencies within one year of EPA's June 14, 2013 final rule:

- Sub-element 110(E)(ii) [conflict of interest provisions]: submitting for approval into the SIP the statutes or regulations necessary to substantially meet the requirements of CAA section 128(a)(2) that addresses conflict of interest;
- Sub-element 110(E)(iii) [oversight of local governments and local authorities]: identify the local governments or authorities that: (a) participate in the SIP planning efforts, (b) have been delegated responsibilities to implement or enforce portions of the SIP, and (c) provide copies of the agreement or memoranda of understanding (MOU) between the State and local governments or authorities;
- Element 110(G) [emergency powers]: submit for approval into the SIP the current version of NJAC 7:27-12 "Prevention and Control of Air Pollution Emergencies" (Subchapter 12) and

submit the current version the emergency criteria levels that the State will use in making alerts, warnings or emergencies.

With reference to New Jersey's infrastructure SIP submittal for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS, New Jersey, in a letter dated May 2, 2013, committed to correct the deficiencies that the EPA identified in the April 10, 2013 proposed rule (78 FR 21296) within one year from the effective date of the EPA's June 14, 2013 final rule, i.e., one year from July 15, 2013, or by July 15, 2014. In the SIP submittal dated October 17, 2014, as supplemented in a letter dated March 15, 2017, New Jersey addressed the deficiencies that the EPA identified in the June 14, 2013 final rule. However, CAA section 110(k)(4) requires states to meet their commitment not later than one year after conditional approval; if not, a conditional approval is treated as a disapproval. Therefore, since New Jersey's October 17, 2014 SIP revision was submitted late, sub-elements 110(a)(2)(E)(ii) and (E)(iii) and element 110(a)(2)(G) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS were disapproved, by operation of law. However, the EPA has reviewed New Jersey's October 17, 2014 SIP revision, as supplemented on March 15, 2017, and is now proposing to find that the State has fully addressed the deficiencies that EPA identified in the June 14, 2013 final rule. The reader is referred to the TSD for this action for details concerning the EPA's analysis. Therefore, the EPA is proposing to approve New Jersey's infrastructure SIP submittal for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS as addressing the requirements of CAA sections 110(a)(2)(E)(ii) [conflict of interest provisions] and (E)(iii) [oversight of local governments and local authorities]; and proposing to approve New Jersey's infrastructure SIP submittal for the 1997 8-hour ozone NAAQS as addressing the requirements of

CAA section 110(a)(2)(G) [emergency powers].

With the State's submittal of information that addresses CAA section 110(a)(2)(E)(iii), the EPA is proposing to remove 40 CFR 52.1579 (Intergovernmental cooperation) that the EPA previously identified as not meeting the requirements of subpart M (Intergovernmental Consultation) of part 51 since the SIP had not adequately described the responsibilities of local agencies in developing, implementing and enforcing the SIP.

VI. What action is the EPA taking?

The EPA is proposing to approve New Jersey's infrastructure submittal dated October 17, 2014, as supplemented on March 15, 2017, for the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically sections 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD and the permitting program for minor sources and minor modifications), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD and visibility), (K), (L), and (M) of the CAA.

The EPA is not taking action on the following elements that are not germane to infrastructure SIPs: sections 110(a)(2)(C) (sub-element related to nonattainment permitting); 110(a)(2)(I); and the visibility requirements of section 110(a)(2)(J). In addition, with respect to 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, the EPA previously took action on CAA element 110(a)(2)(D)(i)(II) [prongs 3 and 4] and will take action on CAA element 110(a)(2)(D)(i)(I) [prongs 1 and 2] at a later date. As noted above, New Jersey withdrew the portion of its October 17,

2014 SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS. Also, with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS, the EPA is proposing to approve that New Jersey has met the infrastructure SIP requirements pertaining to sections 110(a)(2)(E)(ii) [conflict of interest] and (E)(iii) [oversight of local governments and local authorities]; and with respect to the 1997 ozone NAAQS, we are proposing to approve that New Jersey has met the infrastructure SIP requirements pertaining to section 110(a)(2)(G) [emergency powers].

The EPA is proposing to delete the deficiency at 40 CFR 52.1579 because the deficiency identified would be resolved by the approval of CAA section 110(a)(2)(E)(iii) for each of the NAAQS indicated in this action.

In addition, the EPA is proposing to incorporate into the New Jersey SIP the following regulation and statutes:

N.J.S.A. 52:13D-14, 52:13D-16(a)-(b) and 52:13D-21(n) “New Jersey’s Conflict of Interest Law,”⁸
N.J.A.C 7:27-12, “Prevention and Control of Air Pollution Emergencies.”⁹

VII. Incorporation by reference

In this rule, the EPA is proposing to include in a final rule regulatory text that includes

⁸ N.J.S.A. 52:13D-14 (effective January 11, 1972). 52:13D-16(effective January 11, 1972); most recent amendment to 52:13D-16, (September 16, 1996). 52:13D-21 (effective January 11, 1972), subsection 52:13D-21(n)(effective March 15, 2006).

⁹ N.J.A.C 7:27-12 state effective October 24, 1969 as amended May 20, 1974).

incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations and statutes identified at the bottom of Section VI of this rule. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to New Jersey's section 110(a)(2) infrastructure requirements for the 1997 and 2008 ozone NAAQS, 1997, 2006 and 2012 PM_{2.5} NAAQS, 2006 PM₁₀ NAAQS, 2010 NO₂ NAAQS, 2010 SO₂ NAAQS, 2011 CO NAAQS, and 2008 lead NAAQS do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Lead, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 14, 2018. Peter D. Lopez,
Regional Administrator,
Region 2.

[FR Doc. 2018-04191 Filed: 2/28/2018 8:45 am; Publication Date: 3/1/2018]